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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the combined fourth and fifth periodic reports of Maldives

Addendum

Information provided by Maldives in follow-up to the concluding observations*

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Note: The present document is being circulated in English, French and Spanish only.

* The present document is being issued without formal editing.

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Introduction

1. In March 2015, the Committee released its concluding observations on Maldives's fourth and fifth combined periodic report [CEDAW/C/MDV/CO/4-5]. Along with a number of positive observations, the Committee made some recommendations for further action. It asked Maldives to provide, within two years, follow-up written information on the steps undertaken to implement its three recommendations on removal of CEDAW reservation (recommendation 9) administration of justice (recommendation 13 (a)-(c)) and de-criminalize and abolish flogging (recommendation 45(a).

2. The information below discusses the measures taken to date to implement these recommendations. Maldives will provide full responses to these and the other recommendations made by the Committee in its sixth periodic report in 2019.

3. Maldives has been granted a deferral of the date for providing this follow-up information from February 2017 to October 2017.

Removal of reservation to article 16

The Committee urges the State party to ensure the full implementation of the Convention and, to that end, recommends that it honour its commitment to withdrawing its reservation to article 16 (2) within a clear time frame and to reviewing its reservation to article 16 (1), with a view to fully withdrawing it, taking into consideration the practices of countries with similar religious backgrounds and legal systems that have successfully harmonized their national legislation with international human rights obligations and consultations with civil society, in particular women's organizations.

4. The Constitution maintains the reservation on the application of article 16 of the CEDAW concerning the equality of men and women in all matters relating to marriage, and family relations "without prejudice to the provisions of the Islamic Shari'ah, which govern all marital and family relations of the 100 percent Muslim population of the Maldives". Article 2 of the Constitution identifies the Maldives as Republic based on the principles of Islam and the full separation of powers. Article 10 states that Islam is the State religion. The present socio-cultural and political setting in the Maldives and the prevailing interpretation of the sharia on matters relating to reservation on Article 16 impede efforts to address unequal gender relations in marriage.

5. The Government however, is working on modifying the reservations made to Article 16 CEDAW, those within provisions permissible under the Maldives Constitution and as long as they do not conflict with Islam and Sharia provisions. As such, the Maldives has initiated the domestic process necessary to modifying the reservations placed on CEDAW Article 16. Towards this end, in 2015, the Ministry of Law and Gender submitted a paper to the Cabinet, on modifying the Maldives reservations to Article 16 (2), and Article (1) (a), (b), (e), (g) and (h).

6. Specific provisions of Article 16 (1) have been identified in this proposal because, Maldivian women, despite the reservation placed on these provisions of CEDAW, has equal rights in law and practice: (a) the same right to enter into marriage; (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent; (e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (g) The same personal rights as husband and wife, including the right to choose a family

name, a profession and an occupation; and (h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

7. Once the Cabinet endorsement is issued, the case will be submitted to the Parliament for approval, in accordance with Article 93 (b) of the Constitution.

8. While the Government is working on the domestic process to modify the reservation placed on CEDAW Article 16, the Supreme Court on 20 September 2016, passed an Amendment to Section 85(b) of the Regulation on Family Matters. This Amendment requires the Family Court to seek a special permission from the Supreme Court of the Maldives for every marriage application from a minor. This submission to the Supreme Court from the Family Court for the special permission, must also be supported with an assessment of the application by the Ministry of Gender and Family. Since this regulation came into effect, the Ministry of Gender and Family has not given approval to any application for marriage, by anyone under 18 years of age.

9. All marriages are registered and recorded in an official registry and is compulsory. Marriages 'concluded' outside of the Maldives courts, including those concluded abroad, will need to be registered in a Maldivian court, for it to be recognized as a legally valid marriage.

Administration of justice

The Committee urges the State party:

(a) To expedite the adoption of bills pending before the parliament aimed at strengthening the State party's administration of justice, in particular the bills on legal aid, evidence, witness protection, juvenile justice and the judicature, remove evidentiary requirements that discriminate against women and ensure the equal consideration and weight of women's testimonies as witnesses;

10. Article 53 (b) of the Constitution obligates the State to provide legal aid to indigent defendants who cannot afford a lawyer. Since 2009, the Attorney General's Office has provided legal aid for serious criminal offences. Furthermore, in 2015, the Government ratified a Mutual Legal Assistance in Criminal Matters Act (Act No. 2/2015) to provide legal aid for those who cannot afford the services of a lawyer in serious criminal cases. In order to implement this law, a Mutual Legal Assistance in Criminal Matters Regulation (No: 2017/R-78) was also adopted in October, 2017.

11. The Judicature Act of the Maldives (Act No: 22/2010) was enacted in 2010, which determines the courts of the Maldives, their jurisdiction and the principles governing the functions of these courts for the purpose of administration of justice in the Maldives in accordance with the Constitution of Maldives. In June 2017, an Amendment was made to the Judicature Act, which reduced the number of judges on the Supreme Court bench from seven to five, and required to establish two branches of the High Court of Maldives one in the northern region and the other in the southern region of the country within 90 days of the amendment's enactment. This has provided easy access to the appeal mechanism.

12. The Juvenile Justice Bill aimed to establish restorative model of justice and is in its final process of drafting and vetting process at the Attorney General's Office. Outcome of various stakeholder consultations has been assimilated and incorporated into the bill to accommodate stakeholder concerns as well as recent legislative changes.

13. Article 42 of the Constitution entitles everyone a fair and public hearing within a reasonable time by an independent court or tribunal established by law in the determination of civil rights and obligations or any criminal charge. An Evidence Bill has been submitted to the parliament which also includes provisions with respect to protection of witnesses. The passage of this bill will complete the reform process of criminal justice framework, which has been modernized with the newly enacted penal code and criminal procedure code developed in accordance with international law principles and standards.

14. The new penal code which was enacted in 2014 and enforced in July 2015 also sets out corresponding sentences in a transparent and equitable manner without any discrimination between men and women, narrowing down the scope of judicial discretion and arbitrary sentencing in criminal justice.

15. The Criminal Procedure Code (CRPC) (Act No: 9/2014) ratified in 2016 entered into force in July 2017. This is the first comprehensive criminal procedure codification in the area of criminal justice in the Maldives. This law, among things, sets out stringent procedures in making applications for court orders, codifies police powers to undertake searches and seizures and mandates a judicial process for this, provides specific timeframes for investigation and prosecution, and introduces the concept of plea deal, discovery process, affidavits to facilitate speedier trial, continuous hearings to guarantee speedier trials and procedures for habeas corpus applications.

16. The Prosecutor General's office has established a Victim Support Department to ensure that all women / girl children has adequate support within the law enforcement process.

(b) To strengthen the independence of the judiciary, establish legal remedies that are expeditious and accessible to women, and ensure, through adequate regulations and procedures, that women who report violations, especially in cases of violence, are treated in a gender-sensitive manner at all stages of judicial proceedings;

17. Protection of the rights of women is a key priority of the Government. These include but are not limited to; enacting relevant legal instruments and adopting zero tolerance policies on violence and harassment against.

18. Furthermore, in order to bring the relevant legislations on non-discrimination and gender equality more in line with the Maldives' obligations under international human rights law, the Government has also ratified the aforementioned Gender Equality Act (GEL) in 2016. The key objective of GEL is to operationalize the constitutional provisions on gender equality, prohibition of discrimination against women, and promote the use of Temporary Special Measures.

19. The Ministry of Gender and Family has recently validated a Gender Equality Policy and a Gender Equality Action Plan (GEAP), which will create specific activities aligned with the newly ratified Gender Equality Act 2016.

20. The new penal code enacted in 2014 and which came into force in July 2015 comprehensively defines all crimes, including that of rape. Specific legislations for the protection of women has been formulated and ratified, such as the Domestic Violence Prevention Act, Sexual Harassment and Abuse Prevention Act 2014 and the Sexual Offences Act in 2014. The strengthening of criminal justice system is a major achievement as it has enabled women to seek timely legal remedies for any violations of their rights or in any instance of violence against them.

21. In particular, the Domestic Violence Prevention Act stipulates legal provisions to protect survivors from domestic violence through protection orders, mandated

interventions by Social Services, Police and Health Sector, further giving the Family Protection Authority the responsibility to monitor interventions and strengthen collaborative mechanisms within the sectors responding to domestic violence.

22. The Family Protection Authority (FPA) was established under the DVP Act in September 2012 with the purpose to prevent and combat domestic violence in the Maldives. In order to bring the comprehensive support mechanism for prevention, protection and access to justice for survivors of domestic violence mandated by law, FPA devised the first Maldives Domestic Violence Prevention National Strategy (2014-2016), and also conducted a mapping of the existing services (2013) for domestic violence survivors, and a commentary of the DVP Act.

23. The second Maldives Domestic Violence Prevention Strategic Plan (2017-2021) has also now been formulated, endorsed and disseminated to relevant stakeholders for implementation. A monitoring and evaluation tool to measure the progress of the implementation of the Strategic Plan has been developed. The purpose of the Strategic Plan is to facilitate the full implementation of the Domestic Violence Prevention Act, through which evidence based decisions and policies could be derived. Further, a 5-day Training Manual on Domestic Violence and a Media and Advocacy Action Plan has been developed and a number of training and awareness programs has been conducted for stakeholders and to the general public in Male' and in atolls to disseminate information about the law, rights, and protective measures guaranteed under the law.

24. A number of education and training programmes have been conducted for the judiciary under the Domestic Violence Prevention Act. These programmes were conducted by the Department of Judicial Administration. A myriad of programmes have been conducted since the ratification of the Act with participants ranging from magistrates, judges to appellate court justices. Awareness and training were focused on gender sensitive legislations and promotion of women's human rights. Training programs were conducted to all prosecutors over the last few years to provide them with the knowledge of gender equality and to disseminate the contents of the convention to the general public. Trainings focused on effective prosecution of gender based violence and sexual abuse case. Sensitizing training session on domestic violence Prevention Act was held in 2013, gender equality and women's rights sessions in 2013, and sensitizing programme on CEDAW was also held in January 2014.

25. Further, the Ministry of Gender and Family continues to undertake nationwide awareness programs on Family Law, Domestic Violence Prevention Act, Sexual Harassment and Abuse Prevention Act and Sexual Offences Act. It has also commenced programs for youth, especially for women and girls, on the importance of drawing prenuptial agreements before entering into marriage.

26. With the assistance of the Asian Development Bank, Gender sensitization programmes have been conducted for staff of Maldives Police Service Officers across the Maldives, covering all Police service stations in the country. A total of 219 police officers from all Atolls have been sensitized under this programme during 2017.

27. In September 2017, a three day (3) Symposium on Child Rights and Juvenile Justice was held with participation from magistrates and judges. Various papers were presented at the Symposium, along with Training of Trainers for Justices and Law enforcement agencies such as the Maldives Police Services. The dialogue paved way for a Judicial Plan of Action on matters pertaining to access to justice for the most vulnerable and marginalized.

(c) To take measures to increase the representation of women in the judiciary, in particular as judges and court officials;

28. The number of women working in the judiciary has increased, when compared to statistics from 5 years ago. There are 7 female judges, 59 court officers and 628 female staff in other areas of judicial administration currently.

	Male	*Female*	*% Women*
Judges	142	07	4.70
Court Officers	86	59	40.69
Female staff in other areas in the judiciary	806	628	43.79
Total	**1 034**	**694**	**40.16**

29. Gender sensitization programme for the judiciary has been planned, and will be implemented during the course of 2018. The ADB funded Gender Sensitisation programme includes training and sensitization on basic gender concepts, women's protection and gender equality legislation recently introduced in the Maldives.

The Committee recommends that the State party:

(a) As a matter of urgency, decriminalize and abolish the imposition of flogging as a sentence for consensual sexual relations outside marriage, as recommended by the Committee in its previous concluding observations (CEDAW/C/MDV/CO/3, para. 34);

30. The Constitution guarantees a universally accepted set of rights to all persons, in a manner that is not contrary to any tenet of Islam, subject to enactment by the Peoples Majlis. Article 10 of the Constitution of the Maldives, explicitly stipulates, that the religion of the State of the Maldives is Islam. Furthermore, Islam shall be the one of the basis of all the laws of the Maldives, and there no law contrary to any tenet of Islam can be enacted in the Maldives.

31. However, mindful of the Committee's recommendations, various safeguards have been put in place such as the Special Procedures Act on Sexual Abuse (12/ 2009) stipulates that no child under the age of 13 years of age can give consent, and that any child between the ages of 13 – 18 years has an excusable defence within any court of law, unless they explicitly express that they had willingly given consent.